

EXHIBIT 1
part 4 of 5

1 evaluation, there's no evidence for a known or thought
2 disorder, and he denied any suicidal or homicidal
3 ideation. Inmate Baker's judgment is very good, and
4 he has demonstrated excellent insight into himself and his
5 commitment offense. (Indiscernible) information from
6 prior psychological reports (indiscernible) inmate
7 Baker's discussion today for this interview. He
8 clearly stated, "I feel really bad about the crime of
9 Mr. Dixon. I ask myself did he have a child or a
10 wife, if he was married, and how would this affect his
11 family." Inmate Baker stated further what was so
12 overwhelming that when my uncle was shot and paralyzed
13 from the neck down, sometimes I wake up in the night.
14 I understand how I have affected everyone. That what
15 you do to others comes back to you. The shot that
16 paralyzed his uncle gave him clear insight into how
17 Mr. Dixon's family felt. Inmate Baker offered the
18 following information and affirmed that he
19 understanding of his actions. Quote, "The Parole
20 Board asked me why I should be found suitable for
21 release. I said no, because there's no way I can give
22 back what I took from Mr. Dixon. I cannot tell you
23 that whether I am suitable for release. That is up to
24 God. There is no way I can give them back which I
25 have taken from Mr. Dixon." Unquote. Assessment of
26 dangerousness: Inmate Baker has made exceptional
27 gains during his incarceration having taken full

1 advantage of self-help opportunities and educational
2 programs. What is even more relevant in importance,
3 inmate Baker's intrinsic right to be (indiscernible)
4 mature, responsible, conscientious. As anyone who is
5 familiar with the prison system can attest it is
6 (indiscernible) given the nature of the
7 (indiscernible) of this person; however, inmate Baker
8 does not have a violent history other than the
9 commitment offense as he has maintained excellent
10 self-control and good behavior toward his
11 incarceration. If released into the community --
12 given all the factors mentioned, his estimated
13 potential for violence within a controlled setting is
14 significantly below average relative to the inmate
15 population. (Indiscernible) two 115s also. If
16 released to the community, inmate Baker's potential
17 for violence is estimated to be the same as that for
18 an average citizen. In fact, one may make the case
19 given his ability to remain free of violence for his
20 incarceration which is an inherently no violence
21 setting than the community. He may have a below
22 average probability of being involved in the violence
23 as compared to the average citizen. The only apparent
24 risk factor for which Mr. Baker which could be a
25 precursor to violence would be a return to illicit
26 substance use; however, inmate Baker does not have a
27 significant substance abuse history, and has attended

1 AA and NA since 1991, a period of 15 years. He has
2 also (indiscernible) a very mature attitude towards
3 understanding substance abuse as it occurred in his
4 family. (Indiscernible) a very insightful
5 (indiscernible). Counsel, do you want to make some
6 additions or comments?

7 ATTORNEY TARDIFF: Not at this time.

8 DEPUTY COMMISSIONER MEJIA: I'll return back to
9 the chair.

10 ATTORNEY TARDIFF: I would just like to clarify
11 something. Is the transcript that's being
12 incorporated into this hearing, does that consist of
13 an 84 page transcript from September 24, 2004?

14 PRESIDING COMMISSIONER FISHER: If my
15 understanding of the court order is correct, that's
16 what they're instructing us to do. What I have
17 specifically incorporated for the purposes of this
18 hearing is the summary of the offense, and I'll leave
19 it to our legal department.

20 ATTORNEY TARDIFF: All right. Well, I just --

21 PRESIDING COMMISSIONER FISHER: What the court
22 is ordering. It does - that's what it looks like to
23 me.

24 ATTORNEY TARDIFF: 84 pages of a transcript
25 from September of '04?

26 PRESIDING COMMISSIONER FISHER: Yes.

27 DEPUTY DISTRICT ATTORNEY DUNN: All right. I

1 would like to know at what point the victim may give a
2 statement. He's come a long way today.

3 PRESIDING COMMISSIONER FISHER: He'll be the
4 last one.

5 DEPUTY DISTRICT ATTORNEY DUNN: He's come a
6 long way today, and it's difficult for me to say
7 without repeating what's in the transcript. So please
8 bear with me.

9 PRESIDING COMMISSIONER FISHER: Okay. And
10 he'll get the last word.

11 DEPUTY DISTRICT ATTORNEY DUNN: I understand.
12 I understand that everybody has a copy of the
13 transcript, and I would like to have us make a
14 statement by pointing out what happened last year.
15 First of all, I'd like to refer everybody to page 49
16 of the transcript. This inmate did not take
17 responsibility for his crime. When he was questioned
18 by the Deputy Commissioner on page 49 beginning at
19 line 6, when the Deputy Commissioner asked him, how
20 did the victim get shot twice, the inmate, beginning
21 on page 49 line 8 said, by claiming he had the gun
22 pointing out, and I believe this. I don't know, but I
23 believe he pulled the trigger thinking I pulled the
24 trigger, and that's how that happened because both
25 barrels were, like, right there. Inmate, on line 12
26 of page 49. That is not taking responsibility because
27 it's a direct contradiction to what is pointed out

1 clearly by the appellate court in their opinion, which
2 is based, of course, on the transcript of the trial,
3 beginning on page 4 at the bottom, and ending at the
4 top of page 5, where the appellate court pointed out
5 that the laboratory tests of gunshot residue indicated
6 that defendant Baker was the one who shot Dixon and
7 ballistic tests indicated that the bullet had been
8 fired from one of the guns taken at the hardware
9 burglary that evening. In other words, as recently as
10 last September, the inmate was not taking
11 responsibility for one of the victims, that being
12 Mr. Dixon, by claiming that his co-defendant, who he
13 refers to as his crimee, was responsible for the
14 second shot. That's a fundamental part of his crime,
15 if not the most important portion of his crime, and
16 still as recently as September 24th of '04, he was
17 untruthful about how this crime happened. The
18 psychiatrist, in his report from April 29th, says that
19 Mr. Baker demonstrates excellent insight and has
20 remorse. There cannot be excellent insight when one
21 is denying the fundamental occurrences of the crime.
22 Insight means full acceptance and responsibility for
23 everything that happened. It does not mean that one
24 continues to misrepresent what really happened that
25 night as Mr. Baker has continued to do as recently as
26 last year. He does that in other ways as well. On
27 page 54 of the transcript, as Deputy District Attorney

1 Danville (phonetic), beginning on line 11, pointed out
2 the information that was referred to by the appellate
3 court regarding to the gunshot residue and regarding
4 that the bullets were fired from one of the guns, she
5 points that out, and at that point, all persons
6 present at the hearing, which I believe are all
7 parties here with the exception of myself, were given
8 a copy of the appellate report to read. It is clear
9 that Mr. Dixon has not acknowledged that he fired the
10 shot --

11 PRESIDING COMMISSIONER FISHER: Mr. Baker.

12 DEPUTY DISTRICT ATTORNEY DUNN: Mr. Baker has
13 not acknowledged that he fired the shot, not once, but
14 twice. Again, on page 60 of the transcript, there is
15 another issue he has not told the truth about.
16 Beginning on line 20 when questioned by Deputy
17 District Attorney Danville, inmate Baker is asked
18 through the Commissioner for what purpose did his
19 cousin go acquire the gun and the inmate responded,
20 beginning on line 22, that the cousin and the father
21 were going hunting and that they had gone hunting and
22 fishing. That is not true. According to what the
23 appellate court said on page 4 and 5 of their report,
24 the gun that was traced to a bullet in Mr. Dixon was
25 stolen from a hardware store. So the inmate was only
26 lying about who fired the second shot, but he's lying
27 about where the guns came from. That's fundamental to

1 this case, and it does not again demonstrate any
2 insight, let alone excellent insight, for him to
3 continue to lie about where the guns came from. Again
4 on page 62 of the transcript, at line 22, beginning on
5 line 19 and continuing to line 23, Deputy District
6 Attorney Danville is asking inmate about where he got
7 the clothing and the make-up. And then Mr. Baker,
8 beginning on page 62, line 24, says, "That was after
9 all that was done, after all that was done, and then I
10 believe my cousin's baby started crying, and she said
11 there was no milk, and we didn't have a way to get to
12 the store or nothing like that, and so that's when
13 this stuff about going out there and getting a car on
14 the road." The inmate continued to claim that these
15 people went out to steal a car for the purpose of
16 buying milk for a baby. That's not true. That's a
17 misrepresentation of the facts, and so again, there's
18 no insight, and there's no acceptance of
19 responsibility. When the plan was that these people
20 would all go out and commit a carjacking and a
21 robbery. Nobody had to buy milk, so as recently as
22 September 24th of 2004, the inmate has continued to
23 misrepresent the truth. Again, there's another
24 example. Beginning on page 64 of this transcript,
25 Deputy District Attorney Danville, at line 8, asks the
26 inmate when they left the house, had he seen the other
27 guns yet, and the inmate responded, "Right when we

1 started leaving the house, that's when I seen them.
2 That's when I seen them." We know from all the facts
3 that that cannot be true. That the guns, in fact,
4 were in the hands of those people as they walked the
5 three to four miles to the point where they stole the
6 first car. He knew there were guns because those guns
7 were stolen in a hardware burglary the night before or
8 the same day. So the inmate had the guns. He didn't
9 just see them for the first time when they walked out
10 of the house. Now, again on page 69, Deputy District
11 Attorney Danville asked the inmate, "Does the inmate
12 recall Bernice (phonetic), referring to the
13 co-defendant, coming back out to the car where the
14 three men were waiting to tell them the condition of
15 the store, that she only saw a female, go ahead, go on
16 in." The inmate, beginning on page 69, line 11, says,
17 "That absolutely didn't happen. That didn't happen.
18 I don't remember nothing like that because the way
19 that went down when my cousin went in to get the milk,
20 while she was in the store, that's when the decision
21 was made to rob the store. So she didn't know nothing
22 about that." Well, the circumstances indicate that
23 that is not true, that the plan was made that day to
24 go out and commit a robbery. So that for the inmate
25 to say at recently at September 24th that they made a
26 decision out in the parking lot to rob flies in the
27 face of the circumstances, and again, there's no

1 demonstration of responsibility or insight when the
2 inmate is continuing to claim that they never decided
3 to rob until they were sitting out in the parking lot.
4 Now, on page 74 of the transcript, again beginning in
5 the middle of the page, Deputy District Attorney
6 Danville says, "Once they released the two women, who
7 fired the shot over their heads?" Inmate Baker
8 replies, beginning online 17, "I believe that had to
9 be Steven. It had to be. It had to be Steven because
10 I was driving." Now, when Mr. Baker says that --
11 indicates that he does not know who fired the shots.
12 However, he according to his own statement was sitting
13 next to the person who was firing the shots, so he
14 knew full well who it was that was firing the shots.
15 He saw him do it. Now, there is another indication
16 that Mr. Baker again not taking responsibility, and
17 this goes back to the issue that I started with. Look
18 at page 75 of the transcript from September 24th, '04,
19 beginning on line 19 in response to a question by the
20 Deputy District Attorney. Inmate Baker says, "Like I
21 said earlier, I believe it was two guns. Like I said,
22 I pulled the trigger once. And I'm saying if they're
23 saying he got shot twice, the other gun had to be
24 there. It had to be there. There were three guns in
25 the car. He got shot twice. I pulled the trigger
26 once. It had to be another gun." That statement by
27 inmate Baker made as recently at September of last

1 year, again, indicates that he's not taking
2 responsibility for the second shot. He knows who
3 fired those shots. The ballistics tests indicated he
4 fired both shots. He had the gunshot residue on his
5 hands. How can a man have excellent insight when he's
6 still not taking responsibility? Well, he doesn't,
7 and he's not. The gun did not just go off. On page
8 76 of the transcript when asked by Deputy District
9 Attorney Danville why his finger was on the trigger,
10 inmate Baker gives a long, rambling, and disjointed
11 statement that never answers the question. He's
12 basically saying if this happened, it's true, but
13 yeah, my finger was on the trigger, I felt, because
14 that was a logical place for it to be at that time in
15 that state of mind. That is not an acceptance of
16 responsibility. What he's not saying and this victim
17 would like him to say is that he did fire the gun. He
18 did mean to fire the gun. He not only fired it once,
19 but he fired it twice. And our position is that until
20 he takes complete responsibility for what he actually
21 did that night, he should not be granted parole. He's
22 not suitable. Suitability should be reserved for
23 those rare individuals who have actually said, yes, I
24 did it. I did everything I'm charged with. He's still
25 dancing around the truth. He is not telling the full
26 and complete truth, and until that happens, he should
27 not be found suitable because the public is still

1 going to be at risk when Mr. Baker is released. And
2 secondly, his parole plans -- it's very interesting
3 that he is plan A in Rancho Cucamonga, plan B in
4 Marino Valley, and plan C in Fontana. All of these
5 plans, by the way, are several years old. It sounds
6 like Mr. Baker has some people in his life who are
7 saying sure, we'll help you. But the reality is, once
8 he's out there, they're dealing with the reality of
9 him living with them, it appears that those are not
10 very tangible, solid plans, and that is going to lead
11 Mr. Baker into making the same kind of horrible
12 decisions that he made that day. And for that reason,
13 we understand what the Board may do, but we feel that
14 his suitability is severely in question. Thank you.

15 ATTORNEY TARDIFF: In terms of the DA's first
16 issue regarding Mr. Baker not taking responsibility in
17 which she took out from the prior transcripts -- this
18 is precisely why the law states that the re-hearing
19 should take place within 120 days of the prior
20 decision, because it's well over a year since that
21 decision, since any of us have gone through all of
22 this, and that's why the order was that the date be
23 reaffirmed. Things were taken out of context by the
24 District Attorney from that hearing. We only heard
25 several questions with the answer, and it's not a true
26 reflection, and that's precisely why the Board has no
27 jurisdiction today to even hear this. Because the

1 time factor has really made it -- whatever the DA is
2 saying, almost impossible to address. In either
3 event, in terms of not taking responsibility, we have
4 psych evals -- not the most current ones, but we'll
5 include the most current ones, but prior ones as well
6 -- and this is from trained individuals who have
7 spoken at length with Mr. Baker regarding the
8 commitment offense since -- in the '97 and '98, the
9 '03 and the '05, they all four psych evals are
10 positive and supportive of Mr. Baker's release. And I
11 think that they certainly know more than any of us
12 here in terms of -- I don't think four of them would
13 have been completely off base. In terms of the 1997
14 psych eval, it states that his violence potential is
15 below average relative to the inmate population, and
16 at that time they weren't assessing with the free
17 community. That was based on his lack of violent
18 115s, his lack of violent criminal history, as well as
19 his current pro-social attitude. He does not seem to
20 have a substance abuse problem, and it concludes, I
21 agree with the conclusions of both Cat X evaluation in
22 '95 as well as the previous BPT psychological
23 evaluation in '94, which both felt that this inmate
24 had made great strides in understanding his commitment
25 offense as well as its causes. The next report was
26 dated in '98, prognosis for community living is quite
27 positive. He showed excellent insight into his

1 commitment offense. His judgment appears now to be
2 sound. High GAF score of 85. His prognosis is quite
3 positive for being able to maintain his current mental
4 state upon parole. Under the review of the life
5 crime, all of this remorse appears to be genuine and
6 appropriate. In consideration of several factors,
7 including his minimal criminal history as well as his
8 lack of any violent criminal history, his minimal
9 history of 115s, as well as his greater maturity and
10 given his pro-social attitude, his violence potential
11 -- and I'm paraphrasing here, if released to the
12 community is to be no more than the average citizen.
13 And then it points out that the risk factor would be
14 the abuse of illegal drugs; however, it concludes, it
15 did not seem likely he would ever abuse again. And it
16 states under the last page on that '98 report, this
17 man should be commended for taking full advantage of
18 his self-help opportunities during his incarceration.
19 The '03 psych eval is also again supportive, and is
20 contra to the District Attorney's remarks saying my
21 client does not take responsibility. Under the review
22 of the life crime, inmate Baker discussed the crime in
23 detail, his reflection and thoughts about why such a
24 thing might have happened. He stated in particular
25 after taking Dr. Fishback's life groups -- lifer's
26 group, and that's what kind of got him to this point.
27 He is feeling both -- at the time of the crime, and

1 this is where we're getting into the insight -- he was
2 feeling both angry and depressed as a result of what
3 had been happening and this and that, and it goes on
4 to state, "Inmate Baker accepted responsibility for
5 the crime and did not attempt to minimize his part.
6 He demonstrated what appeared to be genuine remorse
7 when discussing the victims, and it was clear after
8 his detailed discussion, that he has spent much time
9 reflecting on the crimes and generating alternatives
10 to his choices at the time." Since being incarcerated
11 for a period of about 23 years, inmate Baker has had
12 two 115 violations, the last one in '89, neither of
13 them were violent, and then again the minor criminal
14 history concluding under the assessment of
15 dangerousness, he's made considerable gains since his
16 incarceration. He has taken advantage of many
17 self-help opportunities, and his violence potential is
18 no higher than the average citizen. He does not have
19 a significant substance abuse history, and he should
20 be commended for taking advantage of self-help
21 opportunities. And then we have the '05 report, which
22 much has been read into the record, concludes that he
23 poses no degree of risk, the same as the average
24 citizen, he has excellent self-control, good behavior,
25 exceptional gains, and just pretty much reiterates the
26 psych eval since '97. So he's had four psych evals in
27 a row, and I didn't go back further than that, but

1 apparently the Cat T, and X as well, were favorable
2 that substantiate that he does have insight into the
3 commitment offense, he accepts responsibility, and his
4 programming has been exceptional. His prehistory is
5 supportive of release in the sense that he had only
6 one prior conviction, no adult convictions or arrests.
7 I would submit that he has a very stable social
8 history and that includes currently he has strong
9 family support. I'm not sure of where the District
10 Attorney gets this information that his family is
11 going to abandon him when he gets out on parole. The
12 evidence presented at the -- at this hearing, which is
13 the rehearing, is that he has solid parole plans, he
14 has strong family support, and all those documents
15 were presented at that time and are here and are
16 incorporated as if they were being discussed. And I
17 don't believe we went into that, but we're going to
18 incorporate it from the prior record. And at that
19 time his parole plans were very suitable. The Board
20 reports are supportive of release. The '04 Board
21 report states considering the commitment offense,
22 prior record in prison adjustment -- excuse me. This
23 writer's impressions are that inmate Baker would
24 probably pose a low risk to the public if released
25 from prison. He received his GED. He's taking
26 college courses. He appears to be mature, following
27 the right path, making right decisions for his life,

1 realizing that what was in his past was wrong and not
2 acceptable. He has found understanding in his study
3 of religion. He practices his religious beliefs.
4 Baker stated during the interview that he feels that
5 incarceration and self-help programs have combined to
6 make him better understand who he is as a person, what
7 his path was all about, and how important it is to be
8 positive on the right path. Now he continues to
9 improve his life and help others. So we not only have
10 four prior psychologists stating that he poses -- does
11 not pose an unreasonable risk, we have the counselor
12 stating that as well. His self-help, I'm not going to
13 go into. That's on the record in the transcript from
14 the September '04 hearing. He's got a job offer -- he
15 has job offers, he has housing, he has strong family
16 support. And again, I still am objecting to this
17 hearing because I don't believe this panel has
18 jurisdiction, and I think that there obviously -- what
19 has come out particularly in the District Attorney's
20 closing remarks, there's a reason why there's a 120-
21 day rule. Because this type of thing, taking things
22 out of context and such as was in the District
23 Attorney's closing is the problem when you hold a
24 hearing this late or this far after the granted
25 decision of September 24, '04. And obviously is a
26 violation of due process, and I'll submit it.

27 PRESIDING COMMISSIONER FISHER: Mr. Dixon, are

1 you both going to be speaking, or just you?

2 MR. DIXON: Just me.

3 PRESIDING COMMISSIONER FISHER: All right.

4 Would you please, when you speak, just say your name
5 and spell your last name again.

6 MR. DIXON: Val Dixon. V-A-L D-I-X-O-N.

7 [End of tape.]

8 DEPUTY COMMISSIONER MEJIA: Okay.

9 (Indiscernible) and we have the victim making a
10 statement.

11 PRESIDING COMMISSIONER FISHER: Go ahead.

12 MR. DIXON: Val Dixon, D-I-X-O-N. First off, I
13 would like to apologize for me blowing up last time.
14 I do -- I'm not that (indiscernible). I was caught
15 off guard, so I just want to tell you that I'm sorry
16 about that.

17 PRESIDING COMMISSIONER FISHER: Okay.

18 MR. DIXON: I'd like to now get a little more
19 in depth than I was last time. I've been in this
20 situation now for 25 years, and I'll be this way for a
21 lot longer. (Indiscernible) it's hard (indiscernible)
22 trying to survive and not hold things in and go on
23 from there. It's not easy for me to talk about this,
24 but I'd rather be a survivor than a victim I guess so
25 that's what -- let's see. (indiscernible). The last
26 25 years wasn't so hot for me. I was (indiscernible),
27 I was working as a warehouse manager, I was coming

1 home from my job when my car broke down and all of
2 this went down. Everybody knows that (indiscernible)
3 after they stopped and asked me if I needed any help,
4 and I said no, that I had somebody to come and get me.
5 They (indiscernible) came back and shoot me, not once,
6 but twice. Now even I can say, okay, maybe it was my
7 fault the first time for (indiscernible), but you
8 can't accidentally shoot somebody twice with
9 (indiscernible) it's impossible. Let's see, I can go
10 on and on about that, but the long and the short of it
11 is that he left me -- or they left me there to die.
12 Why? I mean, if it was an accident, he wouldn't have
13 left. (Indiscernible) I'll ask, and you already know,
14 and I'm hear to show it, I can't just get up and walk
15 out that door right now. I can't take my daughter for
16 a walk. Things like that (indiscernible) involved
17 are, I'm not vindictive. I'm not. But, when he won't
18 even admit to the things that he did that are facts,
19 not hearsay (indiscernible) but certain parts of this
20 thing that I don't recall wrongly. I know exactly
21 what happened. So the long and short of it -- a
22 couple of things have changed. Like, I was in the
23 hospital (indiscernible) over a year between the
24 attack (indiscernible) and it has been like three
25 years of hospital time. That's not including all
26 (indiscernible). I mean I've been in pain
27 (indiscernible). My nerves are shot. (Indiscernible)

1 be able to talk. The point is, (indiscernible) and no
2 big deal, right? That doesn't mean I don't keep
3 going. Like, (indiscernible) ask anybody for help,
4 but there are times that I will break down and lose
5 it. (Indiscernible) years and years of holding things
6 in, and like I said, I do apologize for that, but it's
7 not easy. I'm not a vengeful person. I'm really not
8 able. And until he's ready to accept responsibility
9 and say yeah, I did it, how's any of this
10 (indiscernible) words are easy. (Indiscernible) the
11 actions that follow-up on words like that -- it's a
12 lot harder. I'll (indiscernible) suffering down, and
13 I think it pretty much covers what I'm trying to say
14 and what I think you should take into consideration,
15 and that is if he's not ready to take responsibility,
16 how's he going to go out there?

17 R E C E S S

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CALIFORNIA BOARD OF PAROLE HEARINGS

D E C I S I O N

DEPUTY COMMISSIONER MEJIA: Thank you. We're back on the record for your decision in the matter of Mr. Baker, inmate Baker.

PRESIDING COMMISSIONER FISHER: After, once again considering all of the information received from the public, Commissioner Mejia and I are relying on the following circumstances in concluding that we erred in the last hearing. There is information that either was not presented to us in the same manner that it was at this hearing or that we somehow (indiscernible) because we. This is going to be a denial, a one-year denial, and it's going to be based entirely on the commitment offense and insight. And I'll tell you why. We went back through every part of the transcript based on what was said and talked about today, which was the second shot that was fired. And we went back through the (indiscernible) and the ballistics evidence, and I don't know that we had that in front of us last time. If we did, certainly, we overlooked what it meant, because the ballistics evidence clearly states that Mr. Baker was the person who shot Mr. Dixon. It doesn't say that Mr. Baker and another gun shot Mr. Dixon. It says that Mr. Baker (indiscernible) that he had to have fired twice. And

FRED BAKER C-22918 DECISION PAGE 1 10/4/05

1 then every transcript that I have here, he has said
2 that he only fired the gun once. And in his early
3 days, he said that the gun went off, but it still was
4 one time going off. That was in '99. In 2003, he
5 said that Steven shot him too. Mr. Cordero (phonetic)
6 asked him how did Mr. Dixon get shot. He was shot
7 twice. And inmate Baker said I believe it was once
8 because I pulled the trigger just once
9 (indiscernible). And in the most recent hearing in
10 response to Mr. Mejia saying how did the victim get
11 shot twice, Mr. Baker said my crimee, he had the gun
12 pointed out, and I believe this. I don't know, but I
13 believe he pulled the trigger thinking I pulled the
14 trigger, and that's how it happened (indiscernible).
15 That's clearly not what the ballistics said. And for
16 that reason, as well as the gravity of the crime, this
17 is going to be a one-year denial. Mr. Baker has done
18 very well, and it is obvious by the fact that this
19 same panel granted his parole last time. He has been
20 an exemplary inmate and he's done very well. He
21 demonstrated, I think, sincere remorse when he was at
22 his last hearing. But because of the outcome of this
23 kidnap for robbery and the gravity of it based on what
24 the outcome was, it's just too important for him to
25 have good insight (indiscernible) into his culpability
26 (indiscernible) we need to talk about having an
27 FRED BAKER C-22918 DECISION PAGE 2 10/4/05

1 understanding of (indiscernible). And that concludes
2 the discussion. Any comments, Commissioner?

3 DEPUTY COMMISSIONER MEJIA: No further
4 comments.

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23 PAROLE DENIED ONE YEAR

NOV 16 2005

24 THIS DECISION WILL BE FINAL ON: _____

25 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT
26 DATE, THE DECISION IS MODIFIED.


27 FRED BAKER C-22918 DECISION PAGE 3 10/4/05

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

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I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated OCTOBER 20, 2005, at Sacramento,
California.


PATRICIA CHAPIN
TRANSCRIBER
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Declarant

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COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

COURT OF APPEAL - FOURTH DIST.

FILED

MAR 30 1990

RICHARD J. SMITH, ACTING Clerk

Deputy Clerk

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff and Respondent,)

v.)

FRED L. BAKER and
VERNICE ROSE HABBITT,

Defendant and Appellant.)

4 Crim. 12415

(Super.Ct.No. CR 17643)

O P I N I O N

APPEAL from a judgment of the Superior Court of Riverside County. Gerald F. Schulte, Judge. Affirmed.

David Morse Hammond, under appointment by the Court of Appeal, for Defendant and Appellant Fred L. Baker.

Jacalyn T. Drexler, under appointment by the Court of Appeal, for Defendant and Appellant Vernice Rose Habbitt.

George Deukmejian, Attorney General, and Robert M. Foster, Deputy Attorney General, for Plaintiff and Respondent.

Following a jury trial, defendants Fred L. Baker and Vernice Rose Habbitt were each found guilty of three counts of robbery (Pen. Code, § 211), two counts of kidnapping for the purpose of robbery (Pen. Code, § 209, subd. (b)), one count of grand theft (Pen. Code, § 487, subd. 3), one count of car theft (Veh. Code, § 10851), and one count of assault with intent to

murder (Pen. Code, § 217). Allegations in each count that a principal was armed within the meaning of Penal Code section 12022, subdivision (a), were found to be true. Allegations that Baker had personally used a firearm in the commission of the offense within the meaning of Penal Code section 12022.5 and that he had inflicted great bodily injury on one of the victims within the meaning of Penal Code section 12022.7 were also found to be true. Defendants were each sentenced to state prison and have prosecuted separate appeals from the judgment of conviction.^{1/}

This court appointed separate counsel for each defendant. Counsel for defendant Habbitt has filed an appellate brief raising several contentions. Counsel for defendant Baker has filed a Wende brief (People v. Wende (1979) 25 Cal.3d 436), stating that he has reviewed the entire record and has been unable to find any arguable issues on appeal.

FACTS

The pertinent facts will be stated in accordance with the settled rule on appeal that the evidence be viewed in the light most favorable to respondent.

^{1/} Defendant Habbitt was sentenced to life with possibility of parole on one count of kidnapping for the purpose of robbery, plus one year enhancement pursuant to section 12022, subdivision (a). A like sentence was imposed on the other kidnapping for robbery count, the sentence to run concurrently with the other kidnapping conviction. Sentences were imposed on the other counts to run concurrently with the sentence on the kidnapping count, or were imposed and permanently stayed. Defendant Baker was sentenced to state prison for seven years on the assault with intent to murder count. He was also sentenced to life with possibility of parole on the kidnapping for robbery count with an additional 1 2/3 years for the robbery conviction and weapons use findings, the sentences to run consecutively to the sentence on the assault with intent to murder conviction.

Sometime during the night of May 18-19, 1980, a hardware store in Perris, California, was burglarized. Among other items taken were numerous guns and ammunition.

That evening sometime after midnight, Joseph Berger was driving home from work in his red Vega on Wood Road near Perris. He saw a black female hitchhiking and stopped to give her a ride. She was defendant Habbitt. When Berger stopped, defendant Baker and two others (Early Farris and Steven Scoby) emerged from the darkness carrying rifles which had been taken from the hardware store. Berger was ordered out of his car; his wallet was taken; and defendant and their companions got into the Vega and drove off. As they did, one said "Don't let the white boy get away." Berger heard a shot fired over his head and he fled into the shrubs nearby.

About 2 a.m. that same evening defendant Habbitt entered a 7 - 11 market in Woodcrest. She picked up some items, went to the front counter and then left saying she forgot her money and would be back. There were no other customers in the store. Robin Ingram and her mother Harriet Rommel were tending the store. Moments after defendant Habbitt left, defendant Baker (wearing a red dress) along with Farris and Scoby entered the store. Each wore facial covering and carried a rifle. They forced Ingram and Rommel to open the cash register and hand over the contents amounting to approximately \$235. Ingram and her mother were then ordered outside. One of the participants

demanded the keys to Rommel's blue Pinto which was parked outside. When Ingram went into the store to get the keys she was followed by two of the gunmen who took Rommel's purse and cash from Ingram.

After Ingram delivered the keys to the Pinto to one of the individuals, she was ordered into the Pinto and Rommel was ordered to get into the Vega. The two were then driven several miles from the store. Defendant Habbitt drove the Vega and defendant Baker drove the Pinto. Eventually the two cars stopped in an orange grove and Ingram and Rommel were released. They fled into the orange grove and as they did so, a shot was fired over their heads.

After leaving the orange grove, defendants and their companions ditched the Pinto in some weeds alongside a lot and they all got into the Vega with defendant Habbitt driving.

About 3 or 3:30 a.m., Val Dixon was driving down a street just outside of Perris when one of his tires went flat. He stopped to call his automobile club. A red Vega driven by defendant Habbitt pulled up and asked if Dixon needed help. He said he was doing fine and the Vega drove off but shortly it returned and someone in it said "Hey sucker." When Dixon turned he saw a rifle pointed at him. Dixon tried to knock the barrel away but failed and was shot twice. His spinal cord was struck and he has been paralyzed from the waist down. ~~Laboratory tests of gunshot residue indicated that defendant Baker was the one who shot Dixon and ballistics tests indicated that the bullet had been fired~~

~~from one of the guns taken at the hardware burglary earlier that evening.~~

A police radio broadcast the description of the Vega. A Perris police officer spotted a vehicle matching the description of the broadcast and called for a backup. The car was finally stopped and defendant Habbitt was the driver. Defendant Baker managed to crawl under the car unnoticed but was later discovered and arrested. ~~The car contained rifles taken from the hardware store and used during the crime spree, ammunition, the loot from the 7-11 store and Berger's wallet.~~

HABBITT'S APPEAL

Defendant Habbitt contends (1) she was denied effective assistance of counsel and (2) the court erred in denying her motion for a mistrial grounded on a denial of a right to confront and cross-examine witnesses. For the reasons to be stated, we find no merit to the contentions.

I

Defendant Habbitt bases her charge of incompetency of trial counsel on his failure to present a diminished capacity defense and for his failure to make a timely written motion for severance.

The standard governing adequacy of counsel is whether defendant received the assistance of a reasonably competent attorney acting as a diligent, conscientious advocate. (People v. Pope (1979) 23 Cal.3d 412, 423-424.) The burden of proving a

claim of inadequate trial counsel is on the defendant. He or she must show that trial counsel failed to act as a reasonably competent attorney acting as a conscientious and diligent advocate and that counsel's failure resulted in the withdrawal of a potential meritorious defense. (*Id.*, at p. 425.) Where the record on appeal fails to shed any light on the charges of any alleged act or omission of counsel, a claim of ineffective assistance of counsel should be made by a petition for writ of habeas corpus. (*Id.*, at p. 426.)

The record fails to substantiate defendant's claim of incompetency of counsel for failure to investigate the availability of a diminished capacity defense and to present the same at trial.

Defendant contends that the record contains evidence that she and her companions might have been on drugs during the evening in question. She refers to testimony of the victims Berger, Ingram and Rommel that defendant and her companions were jabbering and mumbling at one another, gave conflicting and confusing orders and on the testimony of Ingram that she thought at least two of the group might have been on drugs. Defendant Habbitt also maintains that the testimony of Farris concerning his recollection of the events of the night suggests that he must have been under the influence of drugs.

The record, however, sheds no light on why trial counsel did not present a diminished capacity defense. The record

includes neither an explanation as to why counsel did not raise the defense nor an indication that he was asked for an explanation. Nor is this a case where this court can conceive of no satisfactory explanation for counsel's failure to present the defense. Insofar as the present record is concerned, counsel may have investigated the viability of the defense and found that it could not be substantiated. Or, he may have decided for tactical reasons that reliance on the questionable defense of diminished capacity would have harmed defendant's case.

Defendant concedes that the record is silent as to why a diminished capacity defense was not presented and states that that was the reason she filed the petition for writ of habeas corpus with this court on the ground of incompetency of trial counsel, reciting the same reasons for her claim as are asserted on appeal. Because an evidentiary hearing would be required to resolve the factual issues raised by the petition, this court denied it without prejudice to her right to file the same petition in the superior court. (4 Crim. 12760, Aug. 7, 1981.)

For the foregoing reasons, the contention that defendant was denied effective assistance of counsel for failure to raise the diminished capacity defense must be rejected on this appeal.

Defendant also contends that her trial counsel's failure to make a timely written motion for severance constituted a denial of effective assistance of counsel. The record shows that when the case was called to trial, defendant Habbitt and her counsel

told the court that she wished to waive a jury. The people declined to waive because codefendant Baker had not waived a jury. Counsel for defendant Habbitt thereupon orally moved to have her trial severed. The motion was denied.

Inasmuch as the motion to sever was denied on the merits and not because it had not been made in writing, defendant suffered no prejudice by the failure to make a formal written motion. Moreover, defendant Habbitt concedes that when, as here, the record fails to show why the motion to sever was not made earlier, any claim of incompetency of counsel for failure to make a timely motion to sever must be raised by habeas corpus. (People v. Hall (1980) 28 Cal.3d 143, 158.) Defendant Habbitt has raised that contention in her petition for writ of habeas corpus which was denied without prejudice of the right to file the same petition in the superior court. The contention of inadequacy of counsel with respect to the motion of severance must therefore be rejected.

II

Defendant contends the court committed prejudicial error in denying her motion for a mistrial on the ground that the prosecution was guilty of misconduct in calling Scoby as a witness with the knowledge that he would exercise his Fifth Amendment right not to testify.

Scoby, who was a juvenile, was called as a witness for the prosecution and testified to the following: His relationship with

the other participants; that they all lived in Perris; that he lived in an apartment near Wood Road in Perris with his parents, his sister defendant Habbitt and another sister; that at about 4 a.m. on the night in question he was arrested at the apartment of yet another sister; that he arrived there in a red Vega and that the first time he saw the red Vega was on Wood Road. ^{THIS} Thereafter he refused to answer any further questions and the court found him in contempt. Defendant moved for a mistrial on the ground the prosecutor knew that Scoby would refuse to testify but called him for the purpose of having him invoke his Fifth Amendment privilege in front of the jury to create an adverse inference against defendant. The court denied the motion.

A prosecutor may be guilty of misconduct for calling a witness for the sole purpose of having the witness invoke his Fifth Amendment privilege in front of the jury in order to create an inference reflecting adversely on the party against whom the witness has been called. (People v. Johnson (1974) 39 Cal.App.3d 749, 760; People v. Chandler (1971) 17 Cal.App.3d 798, 803-804.) However, here there was no abuse of discretion in the denial of the mistrial motion for prosecutorial misconduct. The prosecutor represented to the court that he had talked to Scoby the night before and that while Scoby indicated some reluctance to testify, he gave no indication he would refuse or claim the Fifth Amendment privilege; in fact, according to the prosecutor, Scoby said he would appear and testify truthfully. The fact that Scoby gave

considerable testimony before refusing to testify tends to substantiate the prosecutor's representation that he did not call the witness for the sole purpose of having him invoke the Fifth Amendment in front of the jury.

Furthermore defendant did not request the court to give an instruction under Evidence Code section 913^{2/} not to draw any inference from the witness' exercise of the Fifth Amendment privilege. In the present case such an instruction would have cured any harm resulting from the witness' refusal to testify. Defendant is therefore precluded from complaining on appeal of the order denying mistrial. (See People v. Green (1980) 27 Cal. 3d 1, 34-35.)

The judgment of conviction as to defendant Habbitt is affirmed.

APPEAL OF DEFENDANT BAKER

As we indicated earlier, defendant Baker's appointed counsel filed a Wende brief stating that he is unable to find any

2/ Evidence Code section 913 provides:

"(a) If in the instant proceeding or on a prior occasion a privilege is or was exercised not to testify with respect to any matter, or to refuse to disclose or to prevent another from disclosing any matter, neither the presiding officer nor counsel may comment thereon, no presumption shall arise because of the exercise of the privilege, and the trier of fact may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding.

"(b) The court, at the request of a party who may be adversely affected because an unfavorable inference may be drawn by the jury because a privilege has been exercised, shall instruct the jury that no presumption arises because of the exercise of the privilege and that the jury may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding."

arguable issues on appeal. He states he has written to the defendant asking for his comments concerning any issues he would like to have raised on appeal and has also sent him a copy of the brief advising him that he may request this court to have present counsel relieved. This court has received no communication from defendant concerning any issues he would like to raise nor has he requested that present counsel be relieved.

We are faced with an anomalous situation where one defendant has filed a Wende brief and the other defendant has filed a brief raising several issues on appeal. We have earlier concluded that the contentions raised by codefendant Habbitt are either not cognizable on this appeal or otherwise lack merit. We have reviewed the entire record in this case and find no arguable issues on appeal on behalf of defendant Baker. We nevertheless give defendant Baker the benefit of doubt and treat the issues raised by defendant Habbitt as having also been raised on behalf of defendant Baker. Our conclusions on the merits of these contentions as to defendant Baker are the same as those we reached as to defendant Habbitt.

The judgment of conviction as to defendant Baker is affirmed.

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Tamura

J.*

We concur:

Morris
Acting P. J.

McDaniel

J.

*Retired Associate Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council.

Board Transcript (BT)

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PRISON TERMS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

FRED BAKER (BABER))
_____)

CDC Number C-22918

COPY

INMATE

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

SEPTEMBER 24, 2004

PANEL PRESENT:

SUSAN FISHER, Presiding Commissioner
ROLANDO MEJIA, Deputy Commissioner

OTHERS PRESENT:

FRED BAKER, Inmate
MARY ANN TARDIFF, Attorney for Inmate
SARA DANVILLE, Deputy District Attorney
VAL DIXON, Victim
STEPHANIE GARTHWAITE, Observer

CORRECTIONS TO THE DECISION HAVE BEEN MADE

____ No
____ Yes

See Review of Hearing
Transcript Memorandum

Patricia Ricci

Capitol Electronic Reporting

INDEX

| | <u>Page</u> |
|--------------------------------|-------------|
| Proceedings..... | 1 |
| Case Factors..... | 10 |
| Pre-Commitment Factors..... | 19 |
| Post-Commitment Factors..... | 35 |
| Parole Plans..... | 27 |
| Closing Statements..... | -- |
| Recess..... | -- |
| Decision..... | -- |
| Adjournment..... | -- |
| Transcriber Certification..... | 85 |

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P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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DEPUTY COMMISSIONER MEJIA: We're now on
record.

PRESIDING COMMISSIONER FISHER: All right,
thank you. This is going to be a Subsequent Parole
Consideration Hearing for Fred Baker, CDC number
C-22918. Today's date is 9/24/04 and we're located
at the California [sic] Training Facility at
Soledad. Inmate was received on 11/6/80 from
Riverside County. The life term began on 7/31/87
and a minimum eligible parole date of 7/31/94. The
controlling offense for which the inmate was
committed is kidnap for robbery, case number
CR17643, count six, Penal Code Section 209, with an
additional finding of use of a firearm, Penal Code
Section 12022.5, count eight, which is assault with
intent to commit murder, and count one, which is
Penal Code Section 211, robbery. There is a
finding of use of a firearm in that count also.
Counts two, three, four, five, and seven were all
stayed. Inmate received a term of seven years to
life with a two-year enhancement. And the minimum
eligible parole date, once again, is 7/31/94. Mr.
Baker, we're going to tape record the hearing so
for the purpose of voice identification we're going
to state our first and last name and spell our last
name. When we get to you would you give us your

1 CDC number, please.

2 INMATE BAKER: Yes, Ma'am.

3 PRESIDING COMMISSIONER FISHER: Okay, thank
4 you. I'm going to start with myself and go to my
5 left, and for those of you who are on video
6 conference, once we have had everyone in the room
7 here identify themselves, I'd like for you to also
8 identify yourselves for the record, all right.

9 MS. GARTHWAITE: Okay.

10 PRESIDING COMMISSIONER FISHER: Thank you.
11 All right, once again I'll start with myself and go
12 to my left. Susan Fisher, F-I-S-H-E-R,
13 Commissioner.

14 DEPUTY COMMISSIONER MEJIA: Rolando Mejia,
15 M-E-J-I-A, Deputy Commissioner.

16 DEPUTY DISTRICT ATTORNEY DANVILLE: Sara
17 Danville, D-A-N-V-I-L-L-E, Deputy District
18 Attorney, Riverside County.

19 ATTORNEY TARDIFF: Mary Ann Tardiff,
20 T-A-R-D-I double F, attorney for Mr. Baker.

21 INMATE BAKER: Fred Baker, B-A-K-E-R,
22 C-22918.

23 PRESIDING COMMISSIONER FISHER: Thank you.
24 Go ahead.

25 MR. DIXON: Val Dixon, D-I-X-O-N.

26 MS. GARTHWAITE: Stephanie Garthwaite,
27 G-A-R-T-H-W-A-I-T-E, just for technical support.

1 PRESIDING COMMISSIONER FISHER: Okay, thank
2 you. Okay, before we can go any further, Mr.
3 Dixon, I need to ask you to read that --

4 INMATE BAKER: Baker.

5 PRESIDING COMMISSIONER FISHER: I'm sorry,
6 Mr. Baker, if you'd read that Americans with
7 Disabilities Act for me, and just read it out loud
8 into the record.

9 INMATE BAKER: "The Americans with
10 Disabilities Act, ADA, is a law to
11 help people with disabilities.
12 Disabilities are problems that make
13 it harder for some people to see,
14 hear, breathe, talk, walk, learn,
15 think, work, or take care of
16 themselves than it is for others.
17 Nobody can be kept out of public
18 places or activities because of a
19 disability. If you have a disability
20 you have the right to ask for help to
21 get ready for your BPT hearing, get
22 to the hearing, talk, read forms and
23 papers, and understand the hearing
24 process. BPT will look at what you
25 ask for to make sure that you have a
26 disability that is covered by the ADA
27 and that you have asked for the right

1 kind of help. If you do not get help
2 or if you don't think you got the
3 kind of help you need, ask for a BPT
4 1074 Grievance Form. You can also
5 get help to fill it out."

6 PRESIDING COMMISSIONER FISHER: Thank you.
7 Do you understand that?

8 INMATE BAKER: Yes, Ma'am, I do.

9 PRESIDING COMMISSIONER FISHER: All right.
10 I do want to note for the record that on April
11 14th, 2004, Mr. Baker did sign the BPT 1073 Form
12 stating that he has no disabilities. And I just
13 have a few specific questions that I have to ask
14 you before we can move forward. Do you have any
15 problems walking up and down stairs or walking
16 distances of 100 yards or more?

17 INMATE BAKER: No, Ma'am.

18 PRESIDING COMMISSIONER FISHER: Do you need
19 glasses in order to read documents?

20 INMATE BAKER: No, Ma'am.

21 PRESIDING COMMISSIONER FISHER: Do you have
22 any hearing impairments?

23 INMATE BAKER: No, Ma'am.

24 PRESIDING COMMISSIONER FISHER: Have you
25 ever been included in the Triple CMS or EOP
26 Programs?

27 INMATE BAKER: No, Ma'am.

1 PRESIDING COMMISSIONER FISHER: Ever taken
2 any psych meds?

3 INMATE BAKER: No. No, Ma'am, excuse me.

4 PRESIDING COMMISSIONER FISHER: Prior to
5 this offense and prior to coming to prison for this
6 offense, how far did you get in school?

7 INMATE BAKER: Eleventh grade.

8 PRESIDING COMMISSIONER FISHER: Okay. Is
9 there any disability that you suffer from that
10 would prevent you from participating today in the
11 hearing?

12 INMATE BAKER: No, there isn't, Commissioner
13 Fisher.

14 PRESIDING COMMISSIONER FISHER: Okay. This
15 hearing is being conducted pursuant to Penal Code
16 Sections 3041 and 3042 and the Rules and
17 Regulations of the Board of Prison Terms governing
18 parole consideration hearings for life inmates.
19 And as you know, the purpose of the hearing today
20 is to consider again the crimes that you were
21 committed for, your prior criminal and social
22 history, and your behavior and programming since
23 your commitment offense. We have had the
24 opportunity to review your files and your prior
25 transcripts, and we'll give you the opportunity to
26 make any corrections that you need to today, all
27 right.

1 INMATE BAKER: Thank you.

2 PRESIDING COMMISSIONER FISHER: We're going
3 to be deciding today as to your suitability. If we
4 do find you suitable today we'll explain to you
5 also today what the length of your confinement will
6 be.

7 INMATE BAKER: Yes, Ma'am.

8 PRESIDING COMMISSIONER FISHER: Prior to
9 recessing to deliberate we're going to give the
10 District Attorney and your attorney and you the
11 opportunity to make a statement about your
12 suitability. And then once you've done that we'll
13 allow Mr. Dixon to make his statement. After that
14 is completed we will have everyone leave the room.
15 We'll turn off the camera here and we'll
16 deliberate. As soon as we have a decision we'll
17 bring you all back in, okay.

18 INMATE BAKER: Yes, Ma'am.

19 PRESIDING COMMISSIONER FISHER: The
20 California Code of Regulations states that
21 regardless of time served a life inmate shall be
22 found unsuitable for and denied parole if in the
23 judgment of the Panel the inmate would pose an
24 unreasonable risk of danger to society if released
25 from prison. You do have certain rights relating
26 to this hearing. You have the right to a timely
27 notice of the hearing, the right to review your

1 Central File, and the right to present relevant
2 documents.

3 INMATE BAKER: Bless you.

4 PRESIDING COMMISSIONER FISHER: Ms. Tardiff,
5 have your client's rights been met thus far?

6 ATTORNEY TARDIFF: Yes.

7 PRESIDING COMMISSIONER FISHER: All right.
8 You also have the right to an impartial Panel.
9 Having seen your two Panel members today, do you
10 have any objections to your Panel?

11 INMATE BAKER: No, Ma'am, I don't.

12 PRESIDING COMMISSIONER FISHER: Okay, Ms.
13 Tardiff?

14 ATTORNEY TARDIFF: No objection.

15 PRESIDING COMMISSIONER FISHER: Okay. We're
16 going to give you a written copy today of our
17 tentative decision and that decision will be final
18 within 120 days. And then a copy of the decision
19 and a copy of the transcript of the hearing will be
20 sent to you. Are you familiar with the changes
21 just this year as to how you appeal Board
22 decisions?

23 INMATE BAKER: No, Ma'am, I'm not.

24 PRESIDING COMMISSIONER FISHER: Okay. Let
25 me just tell you as briefly as I can. There were
26 15 California Code of Regulations Sections that
27 were repealed. Those were 2050 through 2056. And

1 the current policy is in the Board's Administrative
2 Directive 0401 entitled Administrative Appeals,
3 Correspondence, and Grievances Concerning Board of
4 Prison Terms Decision. I told you that because
5 that's available in the prison library or through
6 your correctional counselor. Basically what it
7 boils down to is that appeals used to go directly
8 to the Board of Prison Terms on the 1040 Form.

9 INMATE BAKER: Yes.

10 PRESIDING COMMISSIONER FISHER: Now they go
11 directly to the courts, okay, so it's just a
12 different process.

13 INMATE BAKER: Thank you.

14 PRESIDING COMMISSIONER FISHER: I want to
15 remind you that you're not obligated today to
16 either admit or discuss the offense, but that this
17 Panel does accept the findings of the court to be
18 true.

19 INMATE BAKER: Yes, Ma'am.

20 PRESIDING COMMISSIONER FISHER: You
21 understand, all right. Okay, I'm going to pass my
22 Hearing Checklist to the two attorneys and make
23 sure that we all have the same paperwork.
24 Commissioner Mejia, do we have any confidential to
25 be used today?

26 DEPUTY COMMISSIONER MEJIA: None to be used
27 at this time. Yes, we do have the victim's impact

1 letters.

2 PRESIDING COMMISSIONER FISHER: Original
3 letters from the victims, all right.

4 ATTORNEY TARDIFF: Yes, I have these
5 documents, thank you.

6 PRESIDING COMMISSIONER FISHER: Do you have
7 anything else that needs to be submitted?

8 ATTORNEY TARDIFF: No.

9 PRESIDING COMMISSIONER FISHER: Okay. Any
10 preliminary objections?

11 ATTORNEY TARDIFF: No.

12 DEPUTY DISTRICT ATTORNEY DANVILLE: I have
13 them as well.

14 PRESIDING COMMISSIONER FISHER: All right,
15 thank you. Is Mr. Baker going to be speaking with
16 us today?

17 ATTORNEY TARDIFF: Yes.

18 PRESIDING COMMISSIONER FISHER: Mr. Baker,
19 if you'll raise your right hand, I'm going to swear
20 you in. Do you solemnly swear or affirm that the
21 testimony you give at this hearing will be the
22 truth and nothing but the truth?

23 INMATE BAKER: I do.

24 PRESIDING COMMISSIONER FISHER: All right,
25 thank you. What I'm going to do, Mr. Baker, is I'm
26 going to read a summary of the crime into the
27 record and then I'm going to ask you to tell me in

1 your own words what happened, okay. And we'll just
2 go from there. I'm using the current Board Report,
3 or the 2002 Board Report. Why is it 2002, I know
4 why, there's no summary in the current one. I'm
5 using the 2002 Board Report under Summary of the
6 Crime.

7 ATTORNEY TARDIFF: No, there's, oh, okay,
8 you're going to use the --

9 PRESIDING COMMISSIONER FISHER: The longer
10 version, because I figure it's got to be closer to
11 the Probation Officer's Report, which is not
12 readable in its copied form. It's really bad.

13 "On 5/22/80 at approximately 1:30
14 a.m., Riverside County Sheriff's
15 Office was contacted by Joseph
16 Burger, that's B-U-R-G-E-R, who
17 reported his car stolen by two
18 females later identified as Bernice
19 Habbit, that's B-E-R-N-I-C-E capital
20 H-A-B-B-I-T, and Fred Baker,
21 disguised as a female. Both were
22 hitchhiking on -- I can only assume
23 it's Cajalio Road, it's
24 C-A-J-A-L-I-O. Burger stopped and
25 offered them a ride. A black male
26 then came from the opposite side of
27 the street and pointed a gun at him.

1 Burger was then pulled from the car
2 by the suspects. Subsequently his
3 wallet was also taken from him.
4 Burger got scared, jumped into a
5 ditch, and ran for his life as a shot
6 was fired by one of the suspects. As
7 he fled, the suspects took his red
8 Vega station wagon and left the area.
9 As this investigation was in process,
10 a report of a robbery at the Seven 11
11 Store at VanBurgen, B-U-R-G-E-N, and
12 Washington Streets was received. The
13 suspect vehicle was a red Vega
14 station wagon. At approximately two
15 a.m. Bernice Habbit went to the Seven
16 11 Store where Harriet Rommel,
17 R-O-M-M-E-L, and her daughter Robin
18 Ingram, I-N-G-R-A-M, worked. Habbit
19 walked around the store selecting
20 items. She placed them on the
21 counter for purchase. When at the
22 counter to pay for her items, Habbit
23 stated that she had to go to her car
24 outside to get more money. A short
25 time later three male suspects,
26 Baker, Ferris, F-E-R-R-I-S, who was a
27 co-defendant that was 14 years old at

1 the time, and Canado, C-A-N-A-D-O,
2 who was also a co-defendant, 14 years
3 old at the time, entered the store
4 carrying rifles and wearing stocking
5 masks. Rommel, who was at the back
6 of the store at the time observed
7 Canado and Baker pointing their guns
8 at Ms. Ingram who was near the cash
9 register. About 140 dollars was
10 taken from the register.
11 Subsequently, Rommel and Ingram were
12 taken outside by the suspects. Ms.
13 Rommel was placed in the back of the
14 Vega station wagon and Ms. Ingram was
15 ordered to give up her mother's car
16 keys so the perpetrators could take
17 her to -- I'm sorry, to take her
18 mother's Pinto car with them. Canado
19 and Baker put Ms. Ingram into the
20 Pinto car with them and they followed
21 the Vega station wagon. In an orange
22 grove area the suspects stopped the
23 cars and ordered both victims out of
24 the cars. They were told to run into
25 the grove and were given a count of
26 five to get out of sight or they
27 would be killed. Subsequently the

1 perpetrators drove to an isolated
2 area and pushed the Pinto into some
3 bushes. Shortly thereafter the
4 victims called the Sheriff's Office.
5 While this investigation was
6 proceeding at approximately three
7 a.m., officers were notified of a
8 shooting on Perris Boulevard near
9 John F. Kennedy Street. Val Dixon,
10 in parentheses it says (victim), had
11 been shot in the stomach and was
12 lying in the street. He stated that
13 his car broke down and he was
14 returning from calling a tow truck
15 when he was approached by a red Vega
16 station wagon driven by a black
17 female who asked if he needed a ride.
18 When he answered negatively, the car
19 kept going and made a U-turn. When
20 the car approached again Dixon
21 noticed a male holding a rifle
22 pointed at him. He attempted to push
23 the gun barrel away from his body.
24 He was shot and the suspects drove
25 away. The victim was later taken to
26 the hospital for medical treatment.
27 Doctors discovered that he'd been

1 shot twice. Val Dixon is now
2 paralyzed from the waist down. At
3 approximately 3:45 a.m. Perris Police
4 observed a red Vega station wagon in
5 the city of Perris. A vehicle stop
6 was affected. Ms. Habbit got out of
7 the driver's door immediately.
8 Ferris got out next and stood between
9 Ms. Habbit and the vehicle while
10 throwing away live ammunition.
11 Canado exited next and placed himself
12 between the other two suspects, and
13 Baker was found hiding under the
14 vehicle. Backup units arrived and
15 they were all searched and
16 handcuffed. Two high-powered rifles
17 were found in the back seat of the
18 vehicle and one was found in the
19 front passenger seat. The suspects
20 stated that Baker had put on makeup
21 and dressed to disguise himself.
22 They also stated that both Canado and
23 Baker had their guns pointed out the
24 car window when Dixon, and when Dixon
25 grabbed the guns both suspects fired
26 and Ms. Habbit drove away. Baker did
27 not discuss the offense with officers

1 at the time of his arrest."

2 And this notes that the source of information was
3 the Probation Officer's Report pages three through
4 seven dated 10/16/80. Now Mr. Baker, tell me what
5 happened.

6 INMATE BAKER: That's pretty accurate there.
7 That's very accurate there. I guess what I would
8 like to add to that is why these things occurred,
9 at least to the best of my understanding. And what
10 I would like for the Panel to know is that the
11 information that I give to you is not a means for
12 me to lessen the (indiscernible) offense or take
13 anything away from it or as an excuse, but it's
14 only for --

15 PRESIDING COMMISSIONER FISHER: I'm sorry.
16 I don't mean to interrupt you. I think you're
17 probably about to talk to me about some insight
18 about what was going on with you?

19 INMATE BAKER: Yes.

20 PRESIDING COMMISSIONER FISHER: And for my
21 purposes right now, I'm just looking to set down
22 the facts of the crime. We are going to talk about
23 that, but I just want to, I want to make sure the
24 facts are on record first. So is there anything
25 factually that you would change?

26 INMATE BAKER: No, that's it.

27 PRESIDING COMMISSIONER FISHER: Okay, we're

1 going to talk about what you were about to bring
2 up, but I wanted to make sure that that's --

3 INMATE BAKER: That's accurate.

4 PRESIDING COMMISSIONER FISHER: Okay, so
5 tell me what was going on with you at the time?

6 INMATE BAKER: I was up under a lot of
7 stress prior to this crime occurring. And what
8 I've come to realize through all the psychological
9 programs I've been involved in throughout the years
10 is that the things that was going on in my life
11 that affected this crime occurred like a week prior
12 to this crime. And what had happened then was I
13 found out that my child had been aborted, and when
14 I heard that, it just kind of, it twisted me. It
15 just sent me in a rage. I didn't know how to deal
16 with that at that time. I didn't talk to no one
17 about that then. When I heard, I didn't even talk
18 to my girl about that, my girlfriend at the time
19 who did that. And what happened leading up to the
20 crime was that I got away from her to go be with my
21 family for support, because I was really distraught
22 behind that because I was looking forward to
23 becoming a father at that time. And like we had
24 smoked marijuana laced with PCP. And what, how
25 that came about was because I smoked a joint one
26 other time in my life and that was during my
27 birthday. And my cousin who observed me smoking

1 that joint -- See all the joint did for me was it
2 made me happy, but it made me eat a lot, but it
3 didn't make me violent or anything. So I can only
4 roughly think in terms of why they would give me a
5 joint at that time to smoke was to bring me up out
6 of that depression. But what no one accounted for
7 was the effects of the PCP. And I say that too
8 because -- This is not an excuse. This is not an
9 excuse.

10 PRESIDING COMMISSIONER FISHER: Well what
11 were the effects of the PCP?

12 INMATE BAKER: It kind of, it deepened my
13 feelings of remorse. I mean, the pain I was
14 feeling for my kid, it deepened that. It made me,
15 what I come to learn, to become narcissistic. In
16 other words, it made me stop thinking about people.
17 It made me think about me. And what I further
18 learned about that is this here. Is as the
19 psychologist -- just bear with me for a minute here
20 so I can get this right -- As I was going through
21 my Category X and all these programs to understand
22 why I did these things, what the psychiatrist
23 discovered in me was this here. When I was 10
24 years old I observed my mother getting robbed and
25 beat to the point where she couldn't have any
26 children as we exited a store and I was pushed to
27 the side. And I remember being upset at myself

1 because I couldn't do anything. But I also
2 remember being upset at society because nobody came
3 to our aid. But what I didn't realize then was
4 that's when the Bloods and Crips had just come out
5 and people were scared to get involved. But that
6 pain and that anger I had then stayed with me
7 because I never dealt with that pain or anger. And
8 so what happened, as soon as I heard about that
9 with my child, I felt again that I had let somebody
10 down that I loved, that I wasn't there to protect
11 that person. And so that sent me over the edge.
12 It really did. And I just, I don't know the proper
13 words to convey to you the things that I was
14 feeling at that time, but it just, it made me, I
15 got numb. It made me like feel just unreal. I
16 just didn't matter anymore. I just didn't exist.
17 And what the PCP did was it made the anger grow
18 more because that anger that I established way back
19 when had never been dealt with and it came to
20 surface. And what that did, it just put it at a
21 real high level. And then that accompanied with
22 the remorse, I mean with the pain I felt for my
23 kid, I just didn't care. And that's what it did to
24 me, I just didn't care.

25 PRESIDING COMMISSIONER FISHER: Okay, let me
26 ask you a couple things related to that.

27 INMATE BAKER: Yes.

1 PRESIDING COMMISSIONER FISHER: You were 18
2 when this happened?

3 INMATE BAKER: Yes, I was.

4 PRESIDING COMMISSIONER FISHER: When, and
5 you said that right before, shortly before this
6 crime occurred was when you found out about the
7 abortion?

8 INMATE BAKER: Yes, Ma'am.

9 PRESIDING COMMISSIONER FISHER: But that,
10 this wasn't the first crime you committed?

11 INMATE BAKER: Yeah, no, there was a
12 burglary I committed. I did a burglary. I went
13 into the store. This wouldn't even be in my file,
14 I was going through changes. I went into the store
15 because I didn't have nothing to eat. I didn't rob
16 the store, I wanted to eat. But the only way I
17 could do that was I sat back and the store closed
18 and I ate. And as I exited that's when the police
19 came.

20 PRESIDING COMMISSIONER FISHER: All right,
21 but then, when you were sent to Juvenile Camp, you
22 escaped.

23 INMATE BAKER: Yeah, I walked away. I
24 walked away from a ranch.

25 PRESIDING COMMISSIONER FISHER: Okay, so
26 what I'm saying is that before this crime happened
27 there was something going on with your attitude.

1 INMATE BAKER: Absolutely. I absolutely
2 agree.

3 PRESIDING COMMISSIONER FISHER: Okay, I just
4 wanted to make sure that was clear on that.

5 INMATE BAKER: Yes, you're right.

6 PRESIDING COMMISSIONER FISHER: So why do
7 you think you took it out on people that you didn't
8 know instead of taking it out on the person that
9 aborted the baby?

10 INMATE BAKER: Well I think it had to do
11 with, like I said earlier, is that I really didn't
12 care because at that time responsibility, thinking
13 responsible and all those things went out the
14 window. And I think, you know and it wasn't, it
15 had nothing to do with them, in that sense that I
16 had met them, because I had never met them before.
17 I didn't even know them people from anyone. So it
18 just happened that they were in that path, that
19 line of path, that path I chose to go down at that
20 time.

21 PRESIDING COMMISSIONER FISHER: In the 2003
22 Psych Report it says that you, when you were
23 talking to the counselor about the review of the
24 crime, it says that your gun went off. Is that
25 correct?

26 INMATE BAKER: No.

27 PRESIDING COMMISSIONER FISHER: What

1 happened?

2 INMATE BAKER: Because I remember like when
3 Mr. Dixon went to slap the gun, right, and my
4 finger, it was on the trigger, and my finger
5 pulled. That's what that was.

6 PRESIDING COMMISSIONER FISHER: Okay, I just
7 want to be clear on that.

8 INMATE BAKER: Yes, Ma'am.

9 PRESIDING COMMISSIONER FISHER: All right.
10 Okay, is there anything else about the facts of the
11 crime that we haven't covered that you think would
12 be important?

13 INMATE BAKER: No, that's fairly accurate.

14 PRESIDING COMMISSIONER FISHER: Okay,
15 because we'll revisit the other things we talked
16 about within the hearing. I want to go through
17 your social history. And normally I start with
18 your, any contacts with law enforcement prior to
19 this crime, but we already talked about the fact
20 that you were arrested for burglary at 17. We
21 talked about what that was, and you walked away and
22 then you went to the Youth Authority, right?

23 INMATE BAKER: Yes, Ma'am.

24 PRESIDING COMMISSIONER FISHER: Okay. Let's
25 see, okay, so was that the reason that you didn't
26 finish high school?

27 INMATE BAKER: Yes, at that time there, like

1 I said, me and my father, we was kind of going
2 through changes. I was upset with my father
3 because my father was, he was drinking heavily, and
4 I didn't like that, because I seen him argue with
5 my step mom. And we was going through it and so I
6 didn't want to be around that and so even when he
7 was trying to tell me to go to school and things, I
8 just wouldn't listen to him. I was rebelling at
9 that point in my life.

10 PRESIDING COMMISSIONER FISHER: Were you
11 living with your father?

12 INMATE BAKER: Yes, I was.

13 PRESIDING COMMISSIONER FISHER: Okay, so you
14 were living with your father and your step mom?

15 INMATE BAKER: Yes.

16 PRESIDING COMMISSIONER FISHER: Okay. And
17 again, and I'm looking at the 2003 Psych Report
18 right now, but it says that your mom died in 1995
19 at 46. Is that actually your biological mother?

20 INMATE BAKER: Yes, that's my mom.

21 PRESIDING COMMISSIONER FISHER: It just
22 wasn't clear if that was your mother. And your
23 father died in 1995?

24 INMATE BAKER: Yes, Ma'am.

25 PRESIDING COMMISSIONER FISHER: And at the
26 time that this was written it says you weren't sure
27 what caused his death. Do you know what that was?

1 INMATE BAKER: No.

2 PRESIDING COMMISSIONER FISHER: But you said
3 that he smoked a lot and --

4 INMATE BAKER: Yeah, my father did a lot of
5 drinking. It contributed to that. I don't know
6 what the factors were that caused it, but I believe
7 it had something to do with his drinking.

8 PRESIDING COMMISSIONER FISHER: And then it
9 says here that you were raised by your mother and
10 grandparents until you were 15, and then when you
11 were 15 you went to live with your father. You
12 have two brothers?

13 INMATE BAKER: Yes, Ma'am.

14 PRESIDING COMMISSIONER FISHER: Okay, and
15 you're still in communication with them?

16 INMATE BAKER: Yes, I am.

17 PRESIDING COMMISSIONER FISHER: And what
18 about your brothers? Did they have any problems
19 with law enforcement?

20 INMATE BAKER: Well the one, my younger
21 brother did. He joined the Crips and all kinds of
22 problems followed that. I haven't really been in
23 contact with him. But my -- I believe he's in the
24 system somewhere, my younger brother. My older
25 brother is a minister and he's been a minister as
26 long as I can remember.

27 PRESIDING COMMISSIONER FISHER: Okay.

1 INMATE BAKER: So he hasn't had any problem
2 with the law.

3 PRESIDING COMMISSIONER FISHER: Okay. And
4 you've been married two times, right?

5 INMATE BAKER: Yes, I have.

6 PRESIDING COMMISSIONER FISHER: It says your
7 first marriage lasted about six years and it
8 started when you were 18.

9 INMATE BAKER: Yes, Ma'am.

10 PRESIDING COMMISSIONER FISHER: And you have
11 no children from that marriage.

12 INMATE BAKER: That's true.

13 PRESIDING COMMISSIONER FISHER: Okay, and
14 then you married again in 2002?

15 INMATE BAKER: Yes.

16 PRESIDING COMMISSIONER FISHER: And are you
17 still married?

18 INMATE BAKER: Yes, I am.

19 PRESIDING COMMISSIONER FISHER: Okay. And
20 it says here that you do receive visits
21 (indiscernible).

22 INMATE BAKER: Yes, Ma'am, I do.

23 PRESIDING COMMISSIONER FISHER: But you have
24 no children at this point, right?

25 INMATE BAKER: Yes, that's true.

26 PRESIDING COMMISSIONER FISHER: All right.
27 You say you'd only smoked pot once before this

1 happened?

2 INMATE BAKER: That's true.

3 PRESIDING COMMISSIONER FISHER: What about
4 alcohol?

5 INMATE BAKER: No, Ma'am, I never drank.

6 PRESIDING COMMISSIONER FISHER: All right.

7 Who are these people that were involved in the
8 crime with you? How did you know them?

9 INMATE BAKER: I had, well, two of them was
10 my cousins. My cousins Bernice and my other cousin
11 Steven. And Ferris was a friend of theirs. And
12 that's who they were. They just happened to be
13 there. I think Ferris, when I went over there to
14 be around people and to kind of up my spirits, and
15 they happened to all be there at that time.

16 PRESIDING COMMISSIONER FISHER: How old was
17 Bernice?

18 INMATE BAKER: I believe Bernice was 18.

19 PRESIDING COMMISSIONER FISHER: The other
20 two were really young.

21 INMATE BAKER: Yeah, like 15 or 16,
22 something like that?

23 PRESIDING COMMISSIONER FISHER: Whose idea
24 was this?

25 INMATE BAKER: Well initially this started
26 out with my cousin Bernice saying that she needed
27 some milk for her baby. And we just couldn't, we

1 didn't have a ride or nothing there, and I wasn't
2 familiar with the area. And then we was talking
3 about going out to the road to get a ride of some
4 type. Initially and the idea of that, about the
5 car taking was mine and Steven, to get to the
6 store.

7 PRESIDING COMMISSIONER FISHER: And three of
8 you had guns, right?

9 INMATE BAKER: Yes, Ma'am.

10 PRESIDING COMMISSIONER FISHER: Did you
11 normally have a gun?

12 INMATE BAKER: No, Ma'am. My cousin, with
13 them, that's sort of like my aunt Della and her
14 husband Hop, they had weapons like that because he
15 used to always go hunting, fishing, and things like
16 that. He was in law enforcement too, so they had
17 things like that around the house.

18 PRESIDING COMMISSIONER FISHER: So at what
19 point did you decide to bring the guns along with
20 you?

21 INMATE BAKER: When we decided to go out
22 there and get the car.

23 PRESIDING COMMISSIONER FISHER: Okay, and
24 why did you disguise yourself as a woman?

25 INMATE BAKER: Because she didn't want to
26 stand out there by herself, and it was dark. And I
27 told her I would dress in a dress and stand there

1 with her.

2 PRESIDING COMMISSIONER FISHER: Because you
3 figured it would be easier to get somebody to pull
4 over?

5 INMATE BAKER: That's one of the reasons.
6 That's one of the reasons.

7 PRESIDING COMMISSIONER FISHER: Okay. Do
8 you have any questions? I'm sorry, I'm moving way
9 ahead in the hearing without actually going through
10 (indiscernible) after I finish asking questions.
11 Is there anything else about your social history
12 that we should talk about before we move on?
13 Anything important?

14 INMATE BAKER: No we basically covered it.

15 PRESIDING COMMISSIONER FISHER: We covered
16 it?

17 INMATE BAKER: Yes, Ma'am.

18 PRESIDING COMMISSIONER FISHER: All right.
19 Let me tell you what I have here regarding parole
20 plans. It says that if you were to receive a
21 parole date that you would live with your fiancée.
22 Is that correct?

23 INMATE BAKER: My wife.

24 PRESIDING COMMISSIONER FISHER: That would
25 be your wife?

26 INMATE BAKER: Yes.

27 PRESIDING COMMISSIONER FISHER: All right.

1 And that you -- Now this is back in the Board
2 Report in 2002. I think the current one says to
3 refer back to it, as I recall, yes, it does. It
4 says that you've received an offer of employment
5 from Ethel Martin?

6 INMATE BAKER: Yes.

7 PRESIDING COMMISSIONER FISHER: Okay. She's
8 your aunt?

9 INMATE BAKER: Yes.

10 PRESIDING COMMISSIONER FISHER: Who has
11 arranged employment as a bookkeeper in an
12 accounting firm. Is that right?

13 INMATE BAKER: That's true.

14 PRESIDING COMMISSIONER FISHER: Okay. It
15 also says you plan to upgrade your computer
16 technology vocational skills by attending college
17 in the evening.

18 INMATE BAKER: That's true.

19 PRESIDING COMMISSIONER FISHER: Okay, is
20 there anything else about your parole plans that we
21 should talk about?

22 INMATE BAKER: Well, I guess I can add into
23 that is that I've had a calling. And what I mean
24 by that, is that God is directing my life in other
25 ways to where He is directing me to become part of
26 a ministry and as a choir director because I've
27 done music all my life since I've been

1 incarcerated. And I didn't understand it at the
2 time I would get into the music, but over the past
3 several years I understand why God put in me such
4 an interest in music, and that's for me to, the
5 calling that He's got me on now. So that's going
6 to be part of my parole plans as well.

7 PRESIDING COMMISSIONER FISHER: And would
8 that be as a volunteer at the church or would that
9 be a paid position?

10 INMATE BAKER: A pastor. I'm going to
11 college also to become a pastor.

12 PRESIDING COMMISSIONER FISHER: Okay, so
13 you're going to actually pursue that as an
14 education program?

15 INMATE BAKER: Yes, Ma'am, absolutely.

16 PRESIDING COMMISSIONER FISHER: All right.
17 I've got some letters of support here and I'm going
18 to read these. I'm not going to read them
19 verbatim. This first one is pretty long. So I'm
20 going to try and pull out the most important parts.
21 If there's anything in any of the letters that I
22 miss that you think would be important for me to
23 read into the record, let me know, okay.

24 INMATE BAKER: Yes.

25 PRESIDING COMMISSIONER FISHER: The first
26 one is from Helen June Smith, and the heading on
27 the letterhead says Accessories and Things and this

1 is in Pomona, California. And she says, this is
2 your aunt, and she says she's in Pomona. She's
3 telling me about her business and her church and
4 where she lives and so on and so forth. She says
5 my position has not changed. I'm here for my
6 nephew Frederick. For many years I have given my
7 support with phone calls, care packages, visits,
8 and prayer. I have noted a great change in
9 Frederick's attitude and outlook on life. He has
10 made great strides in preparing himself for society
11 in education and soul searching. Frederick has
12 voiced his regret for the unlawful deeds he
13 committed as a young man of 18 years old many
14 times. He is ready to give back to society the
15 greatest gift he has, a law-abiding, gifted,
16 talented, well-balanced, educated black man and
17 husband with high morals, self-esteem, and true
18 love for Christ. She talks about your marriage and
19 talks about the fact that you've lost your parents
20 and grandparents and she says that she has a
21 position for you in her retail store industry with
22 great benefits. And I know he'll be a great asset.
23 My husband and I have a large four bedroom home
24 that Frederick and his wife Linda could reside in
25 until they get their foot on solid ground. If they
26 don't wish these arrangements, I've spoken to other
27 relatives that will step in and help make that

31

1 difference. This one is from Joe Draper and is
2 this her husband?

3 INMATE BAKER: Yes, Ma'am.

4 PRESIDING COMMISSIONER FISHER: All right,
5 he says that he has conversed with you through
6 telephone calls and visitations. He says that
7 you're a God-fearing young man and he says that
8 he's seen you grow in a very positive way and that
9 you have a good attitude. He says that you show
10 great remorse and compassion for people that you
11 (indiscernible) you've taken positive steps to
12 educate yourself while you've been in the system.
13 And he says our home and support will be there for
14 Frederick and his wife Linda. And this one is
15 from, this is from Linda. Is this your wife?

16 INMATE BAKER: Yes, that's my wife.

17 PRESIDING COMMISSIONER FISHER: And I think
18 it's supposed to say Williams Baker, but it looks
19 like a B instead of a K.

20 INMATE BAKER: Well my name is actually
21 Baber.

22 PRESIDING COMMISSIONER FISHER: Is it?

23 INMATE BAKER: Yeah, but they got a K in it
24 in the county jail and I guess the only way I can
25 rectify that is go back to court or something.

26 PRESIDING COMMISSIONER FISHER: Okay. All
27 right, well that explains that. So

1 (indiscernible).. She says that she's resided in
2 the same gated community complex in San Bernardino
3 County for five years. She says should the Board
4 decide not to allow Frederick to parole to San
5 Bernardino County, I have agreed to accept
6 temporary residency in a suitable facility until we
7 can establish a much more reliable and permanent
8 residence in Riverside County. She's talking about
9 staying in like a hotel (indiscernible) I assume
10 one of those long-term residential kind of things.

11 INMATE BAKER: Yes, Ma'am.

12 PRESIDING COMMISSIONER FISHER: She says
13 that she's been in contact with your aunt and
14 uncle. And that you can live with them if you need
15 to. She says I am financially able to take care of
16 my husband while he is seeking employment. I have
17 my own business as a caterer, wedding consultant,
18 and event planner. The company's name is LaJoyce
19 Creative Designs, and for the transcriber that's
20 capital L-A capital J-O-Y-C-E, and that the
21 business is located in (indiscernible). That's
22 everything I have in the file. Is there anything
23 I've missed?

24 ATTORNEY TARDIFF: There's some updates.

25 PRESIDING COMMISSIONER FISHER: Are there?

26 ATTORNEY TARDIFF: Yes, you should have it.

27 PRESIDING COMMISSIONER FISHER: Once again,

1 I have some updates, but not that update. I have
2 the, I have two copies of the District Attorney's
3 letter.

4 DEPUTY COMMISSIONER MEJIA: That's what I
5 have too.

6 ATTORNEY TARDIFF: I got this sent to me in
7 the mail.

8 PRESIDING COMMISSIONER FISHER: All right,
9 thank you.

10 DEPUTY COMMISSIONER MEJIA: You're welcome.

11 PRESIDING COMMISSIONER FISHER: All right,
12 let's see. (Indiscernible.) This I have.

13 DEPUTY COMMISSIONER MEJIA: Do you have the
14 June 25th, 2004?

15 PRESIDING COMMISSIONER FISHER: Yeah, I
16 think I've got everything (indiscernible) copies of
17 what I already read. The first one is from
18 Stephanie Velez, V-E-L-E-Z, and she says she's
19 known you all of her life but that in 1993 she
20 became close to you. This is your cousin?

21 INMATE BAKER: Yes, it is.

22 PRESIDING COMMISSIONER FISHER: Okay. She
23 says since that time I've gotten to know my cousin
24 better. I've discovered that he's a very warm,
25 smart, and talented individual. She says that our
26 family is ready to help Frederick in any way
27 possible financially and spiritually. We stand

1 ready to support, assist, and encourage Frederick.
2 This one is from Ethel Martin Miller. And she
3 says, this is your aunt, right?

4 INMATE BAKER: Yes.

5 PRESIDING COMMISSIONER FISHER: She says
6 that she's aware of the crimes that you committed
7 and that she's been in contact with you through
8 telephone calls. And she says I would like it
9 known that this letter is valid indefinitely until
10 Frederick is released. She says that she loves you
11 and she'll help you in every area that you need
12 help in making a smooth transition. She says I
13 have in every letter to the Board members stated
14 that Frederick can live with me and now that he's
15 married I extend the same invitation to him and his
16 wife. She lives in San Bernardino County, and she
17 mentions the job offer that you have from your
18 other aunt. And this says, is it pronounced Hail?

19 INMATE BAKER: Hail.

20 PRESIDING COMMISSIONER FISHER: Hail. This
21 is your uncle?

22 INMATE BAKER: Yes.

23 PRESIDING COMMISSIONER FISHER: And for the
24 transcriber that's H-A-I-L. He says I have seven
25 children and many adopted community children. I
26 have several businesses and he says, he talks about
27 being the victim of a crime. He was shot in an

1 attempted robbery when he was opening one of his
2 stores. He says I lost 80 percent mobility of my
3 body. I'm a quadriplegic and confined to a
4 wheelchair for the rest of my life. He says I am
5 aware that someone was shot and paralyzed in the
6 robbery that was committed by my nephew. I can
7 relate to the victim because of my condition. I am
8 very sorry for what happened, as is my nephew. And
9 he says that you've reversed the direction of your
10 life and has made, that you've made the decision to
11 be an asset to society. And this is another letter
12 from your aunt, which just basically restates what
13 I read. And another copy of the one from your aunt
14 Ethel. This is another copy of the one
15 (indiscernible). I think we have everything. Is
16 that it?

17 INMATE BAKER: Yes, that's it.

18 PRESIDING COMMISSIONER FISHER: Okay, if
19 there's nothing else that we need to talk about as
20 far as your parole plans go, if you will turn your
21 attention to Commissioner Mejia, he's going to go
22 through your program with you.

23 INMATE BAKER: Okay.

24 DEPUTY COMMISSIONER MEJIA: Okay, Mr. Baker,
25 I'll be covering your institutional adjustment in
26 this portion of this hearing since your last Board
27 appearance. I have reviewed your Central File,

1 Board Reports, and Psychiatric Report. If I miss
2 anything I'll give you and your attorney the
3 opportunity to make comments at the end of my
4 presentation. Your last Board appearance was on
5 August 5th, 2003, where you received a one-year
6 denial. The recommendations were for you to remain
7 disciplinary free and participate in self-help.
8 Classification score is 19, Medium A custody level.
9 You're now currently working in the clothing room?

10 INMATE BAKER: Yes, I am.

11 DEPUTY COMMISSIONER MEJIA: Satisfactory to
12 above-average work reports. You're an assistant
13 tailor now?

14 INMATE BAKER: Yes, I am.

15 DEPUTY COMMISSIONER MEJIA: And you have a
16 GED in 1981?

17 INMATE BAKER: Yes.

18 DEPUTY COMMISSIONER MEJIA: And in 1989 I
19 see you have 20 units of Hartnell College
20 attendance.

21 INMATE BAKER: Yes.

22 DEPUTY COMMISSIONER MEJIA: Did you get any
23 degree with that?

24 INMATE BAKER: No, I got my -- First, I got
25 my GED in '89.

26 DEPUTY COMMISSIONER MEJIA: '89?

27 INMATE BAKER: Yes, and no, I didn't

1 complete the Hartnell College.

2 DEPUTY COMMISSIONER MEJIA: So you've got 20
3 units of that?

4 INMATE BAKER: Yes, Sir.

5 DEPUTY COMMISSIONER MEJIA: And you're
6 currently attending the Coastal Crimanon?

7 INMATE BAKER: Yeah, Crimanon.

8 DEPUTY COMMISSIONER MEJIA: Crimanon.
9 (indiscernible) Independent Study Program. And
10 what do you take from that?

11 INMATE BAKER: I'm basically studying --

12 DEPUTY COMMISSIONER MEJIA: And how long
13 have you been there?

14 INMATE BAKER: I've been there since about a
15 year.

16 DEPUTY COMMISSIONER MEJIA: 2004 you
17 started, December 1st [sic]?

18 INMATE BAKER: Yes. That's stuff I just
19 completed. I'm waiting for a completion to come
20 back on that now.

21 DEPUTY COMMISSIONER MEJIA: Okay. And then
22 you have a (indiscernible) administration course
23 completed in 1998?

24 INMATE BAKER: Yes.

25 DEPUTY COMMISSIONER MEJIA: Okay. You've
26 been attending NA, AA, since 1997?

27 INMATE BAKER: Since '90 -- Well here, at.

1 this institution. But I've been in since '91, is
2 when I started.

3 DEPUTY COMMISSIONER MEJIA: And in 2001 you
4 attended a Lifer Group with (indiscernible) this
5 year. Are you still attending that Lifer Process
6 Group? Are you still part of that?

7 INMATE BAKER: No, that group doesn't run
8 anymore. It ran for like a year then they
9 transferred him out and the program stopped.

10 DEPUTY COMMISSIONER MEJIA: Anything else
11 that you've done that I haven't included in my
12 presentation?

13 ATTORNEY TARDIFF: Yeah, he's done a lot.

14 DEPUTY COMMISSIONER MEJIA: Just for this
15 year.

16 ATTORNEY TARDIFF: Right. He's got the
17 Protestant Chapel. Why don't you hand that over to
18 him. I don't know why you don't have that in his
19 Central File.

20 DEPUTY COMMISSIONER MEJIA: No, I don't have
21 it that's why I asked for additional documents
22 earlier today.

23 ATTORNEY TARDIFF: I couldn't make that out.

24 DEPUTY COMMISSIONER MEJIA: You have
25 attending meetings, (indiscernible) you're still
26 with AA and NA?

27 INMATE BAKER: Yes.

1 DEPUTY COMMISSIONER MEJIA: And let's see,
2 Arts and Corrections Program over the last 18
3 years?

4 INMATE BAKER: Yes.

5 ATTORNEY TARDIFF: He's been doing Bible
6 studies. He should have a chrono from 6/04. The
7 Christmas Festival, Body of Protestant Chapel,
8 5/04.

9 DEPUTY COMMISSIONER MEJIA: Let me just read
10 through this.

11 ATTORNEY TARDIFF: And then apparently you
12 didn't get these updates.

13 DEPUTY COMMISSIONER MEJIA: What's that?

14 PRESIDING COMMISSIONER FISHER: I don't
15 think we did. There is some stuff in the back of
16 this Board packet, but I don't know if
17 (indiscernible).

18 DEPUTY COMMISSIONER MEJIA: Okay, so I
19 mentioned AA since 1997 here, and then you say it's
20 1991?

21 INMATE BAKER: Yes.

22 DEPUTY COMMISSIONER MEJIA: I've seen some
23 earlier AA attendance in there. And you're
24 (indiscernible) choir director, Music
25 (indiscernible) since June 2002, 2003?

26 INMATE BAKER: Yes.

27 DEPUTY COMMISSIONER MEJIA: You participated

1 in the Christmas Festival in 2004 [sic], Arts and
2 Corrections, I mentioned that. Active member of
3 the Body of Protestant Chapel for several years
4 according to this chrono in 2004.

5 ATTORNEY TARDIFF: Do you have anything from
6 that Amazing Facts Bible Studies?

7 DEPUTY COMMISSIONER MEJIA: Is that this
8 year?

9 INMATE BAKER: Yeah, I completed it since my
10 last hearing.

11 DEPUTY COMMISSIONER MEJIA: Okay. You got a
12 laudatory chrono from (indiscernible) Barnes, Task
13 Coordinator. (Indiscernible) conscientious, hard
14 working, performance of his duties.

15 (Indiscernible) education, completed the Amazing
16 Facts Bible Study course, October 6th, 2003. Now
17 you've been -- I read that one. You're still
18 attending AA?

19 INMATE BAKER: Yes, I am.

20 DEPUTY COMMISSIONER MEJIA: And I have the
21 chrono here.

22 ATTORNEY TARDIFF: And NA also, right?

23 INMATE BAKER: Yes.

24 DEPUTY COMMISSIONER MEJIA: How do you do
25 both of them?

26 INMATE BAKER: Well it happened, I go to AA
27 on Saturdays, and NA on --

1 DEPUTY COMMISSIONER MEJIA: And NA?

2 INMATE BAKER: And NA on Thursdays.

3 PRESIDING COMMISSIONER FISHER: I can't tell
4 you how many people come in here and tell us they
5 can't go to either.

6 INMATE BAKER: Well one thing I've learned
7 is that you've got to apply yourself to it.

8 DEPUTY COMMISSIONER MEJIA: You have to be
9 resourceful.

10 INMATE BAKER: Amen.

11 DEPUTY COMMISSIONER MEJIA: And you have
12 the, what's this Accessories and Things, what's
13 this for?

14 ATTORNEY TARDIFF: That's the -- forget
15 that. That's a support letter. Is there anything
16 else?

17 INMATE BAKER: No.

18 DEPUTY COMMISSIONER MEJIA: Okay, we'll go
19 to your disciplinary history. You have one July
20 2000, in 1989?

21 INMATE BAKER: Yeah, I had '89 and '84.

22 DEPUTY COMMISSIONER MEJIA: And '84. So two
23 of them, the last being in '89?

24 INMATE BAKER: Yes.

25 DEPUTY COMMISSIONER MEJIA: And you have one
26 128?

27 INMATE BAKER: No, Sir.